

From: [Weeks, Victor](#)
To: [Jacob, Sicy](#); [Lawrence, Kathryn](#); [Ardito, Michael](#)
Cc: [Jennings, Kim](#); [Swenson, Erik](#); [Ziegel, Dean](#); [O'Donnell, Mary Jane](#); [Wallace, Leonard](#); [Higgins, John](#); [Banner, Ellen](#); [Armstrong, Joan](#); [Falconer, Caron](#); [Jaffess, Sharon](#); [Hans, Mick](#); [Mason, Steve](#); [Smith, Monica](#); [Stuckey, Troy](#); [Goodfellow, Bob](#); [Bustos, Patrick](#); [Hess, George](#); [Atencio, Kathie](#); [McFadden, Kelly](#); [Powers, Suzanne](#)
Subject: RE: More info about AP and Reuter requests for EPCRA Tier II data from states
Date: Friday, May 17, 2013 11:22:36 AM
Attachments: [Alaska SERC Tier II Policy.pdf](#)

Please see the attached Alaska SERC Policy on public access to Tier 2 information. This may help other states as they develop or modify existing policy.

Sincerely,

Victor L. Weeks
U.S. EPA Region 4
Air, Pesticides & Toxics Management Division
Chemical Emergency Preparedness & Prevention Coordinator
Atlanta Federal Center
61 Forsyth ST
Atlanta, Georgia 30024
Direct: 404-562-9189
Cell: 770-363-7715
FAX: 404-562-9163

From: Jacob, Sicy
Sent: Friday, May 17, 2013 12:16 PM
To: Lawrence, Kathryn; Ardito, Michael
Cc: Jennings, Kim; Swenson, Erik; Ziegel, Dean; O'Donnell, Mary Jane; Wallace, Leonard; Higgins, John; Banner, Ellen; Armstrong, Joan; Falconer, Caron; Weeks, Victor; Jaffess, Sharon; Hans, Mick; Mason, Steve; Smith, Monica; Stuckey, Troy; Goodfellow, Bob; Bustos, Patrick; Hess, George; Atencio, Kathie; McFadden, Kelly; Powers, Suzanne
Subject: RE: More info about AP and Reuter requests for EPCRA Tier II data from states

Kay: In response to your request for guidance from OEM, I have pulled the language from the statute and the regulations regarding "public access to information under EPCRA". I also checked the preamble language of all the final rules we published, guidance, Qs & As to make sure that we are consistent with the provisions in the statute.

Please see the attached. Let me know if you have any questions. Please forward these to others in the Regions in case I miss anyone. Thanks.

Note: I highlighted certain terms or sentences of the statutory provisions just to emphasize. You may remove the highlighted items if you are forwarding to the States.

Thanks.

*Sicy Jacob
Regulation and Policy Development Division
Office of Emergency Management
U.S. EPA, MailCode 5104A
1200 Pennsylvania Avenue, NW
Washington DC 20004
(202) 564-8019*

From: Lawrence, Kathryn
Sent: Monday, May 13, 2013 1:42 PM
To: Ardito, Michael; Jennings, Kim; Jacob, Sicy
Subject: RE: More info about AP and Reuter requests for EPCRA Tier II data from states

Hi Sicy

Can you also provide us with a clear understanding of how OEM views these AP type requests in terms of Federal Law? Mike cited language in the reg. or the act that speaks to a requirement that in order to get a response a requestor must submit a request for a named facility in writing. I do not have the citation in front of me but would like your insights re: that citation and any others (including language from the Act, legislative history, or policy interpretation) that may have bearing.

It may be worth convening some national discussion to see how various regions are engaging/ or not/ with the issue.

thanks

Kathryn Lawrence
Chief, Emergency Prevention and Preparedness
Superfund Division, U.S. EPA Region 9
(415) 972-3039

From: Ardito, Michael
Sent: Monday, May 13, 2013 10:35 AM
To: Jennings, Kim; Jacob, Sicy
Cc: Lawrence, Kathryn
Subject: More info about AP and Reuter requests for EPCRA Tier II data from states
Hi Kim and Sicy,

I realize you are aware of the recent (right after West, Texas fertilizer explosion) requests from Reuters and Associated Press for access to the states' EPCRA Tier II databases. I've

been called by Hawaii and Arizona (two weeks ago) and Nevada last week regarding this issue. (California has not contacted me yet as the reporters are probably still trying to figure out California's CUPA -- Certified Unified Program Agency -- system. Each state is responding as best possible to AP and Reuters, but some are now grappling with developing (or redeveloping) policies to deal with these kind of requests. An example is what Hawaii is currently doing -- please see email traffic below. (I just called Sharon Leonida in Hawaii and she allowed me to forward this email string to you.)

Will EPA HQ (such as OGC) be providing any guidance on this issue to our states or thru NASTTPO? I realize the other EPA regions are also dealing with many of their states on this issue. It may be good to provide an email or conference call with the Regions in the near future on this issue ... so EPA is having some sort of unified response to our states.

Thanks in advance for any help,

Mike

Michael Ardito | Emergency Preparedness Coordinator | Superfund Division

415-972-3081 | Ardito.Michael@epa.gov

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From: Leonida, Sharon L [<mailto:sharon.leonida@doh.hawaii.gov>]

Sent: Monday, May 13, 2013 9:43 AM

To: monty.elder@deq.ok.gov

Cc: Ardito, Michael; Martin, Clarence (Curtis); keith.kawaoka@doh.hawaii.gov

Subject: FW: AP Request for Tier II data from Hawaii -- FW: Right to know/need to know

Morning Monty,

It's Sharon from Hawaii. As you can see by the email below, the head of our HSERC wants to have a policy in place in case something like this happens again (newspapers, national press etc.). We do have the same system of requesting the name of the facility and address. Would it be possible to have a copy of the Colorado law, "24-72-204(1)(b), C.R.S." , that was in that email that you sent to me last week??? Could you also include your law or policy for Oklahoma? Thank you for the help.

Sharon Leonida

Hazard Evaluation and Emergency Response Office

919 Ala Moana Blvd., Rm 206

Honolulu, HI. 96814

From: Kawaoka, Keith E
Sent: Saturday, May 11, 2013 8:53 AM
To: Martin, Clarence (Curtis); Leonida, Sharon L
Subject: Fwd: AP Request for Tier II data from Hawaii -- FW: Right to know/need to know

Curtis/Sharon-

Go ahead and start drafting a position policy statement..

assemble together all the info we got so far from other states

I'll talk with EPA next week about this.

Begin forwarded message:

From: "Gill, Gary L." <Gary.Gill@doh.hawaii.gov>
Date: May 10, 2013, 6:26:41 PM HST
To: "Okubo, Janice S." <janice.okubo@doh.hawaii.gov>, "Martin, Clarence \\\(Curtis\\)" <clarence.martin@doh.hawaii.gov>
Cc: "Kawaoka, Keith E" <keith.kawaoka@doh.hawaii.gov>, "Acido-Mercado, Leticia [Tish] R." <Leticia.Acido-Mercado@doh.hawaii.gov>, "Fuddy, Loretta J" <loretta.fuddy@doh.hawaii.gov>
Subject: RE: AP Request for Tier II data from Hawaii -- FW: Right to know/need to know
Keith, Curtis,

As you both know, we have been discussing where the "right to know" begins and ends in the Community Right to Know Act for a while now.

After 9/11, I am told, that the state was urged by an agency of the federal government, to restrict access to this information. The concern, generally, seems to be that bad people or terrorists could find out where hazardous chemicals are stored in the state and use that information for evil.

I do not believe that we have ever received any guidance in writing from the EPA or FBI or any federal agency on how to make the Tier II data available.

As far as I am concerned, this is public data and should be fully available to anyone in the public or press who asks for it.

We do not need to put it up on the Web (where there is no control over public access). But if anybody wants it and puts in a written request for these government records, I do not see any legal or policy reason why the information should or could be restricted.

I believe the purpose of the law creating the requirement that DOH collect this information (and the fees to support its collection and availability) is to assure that our first responders know what they may be dealing with if a fire or spill takes place in an industrial facility that stores hazardous material, AND so the public can be assured its RIGHT TO KNOW what hazardous chemicals are being stored and used in our community.

With this AP request we must be absolutely clear on how we will handle the Tier II data. Please draft a policy statement for the director's review and approval regarding the Tier II data availability to the public.

Please have your deputy AG review the draft statement. Then please meet with me about the draft policy so I can brief the Director.

Thanks,
Gary

Gary Gill
Deputy Director, Environmental Health Administration
Hawaii State Department of Health
(808) 586-4424

From: Okubo, Janice S.
Sent: Friday, May 10, 2013 4:36 PM
To: Martin, Clarence (Curtis)
Cc: Kawaoka, Keith E; Gill, Gary L.; Acido-Mercado, Leticia [Tish] R.
Subject: RE: AP Request for Tier II data from Hawaii -- FW: Right to know/need to know

Curtis,

Thank you for your call today. I will let the local AP office know that they may make an appointment to view the Tier II data electronically at the HEER Office.

Janice

From: Okubo, Janice S.
Sent: Friday, May 10, 2013 4:23 PM
To: Martin, Clarence (Curtis)
Cc: Kawaoka, Keith E; Gill, Gary L.; Acido-Mercado, Leticia [Tish] R.
Subject: AP Request for Tier II data from Hawaii -- FW: Right to know/need to know
Importance: High

Hi Curtis,

Could you please update me on the status of the follow-up for the AP request for Tier II data? The local AP office contacted the Governor's Office and I need to call back the local

AP office on Monday. The AP is saying that all the other states provided the their lists and Hawaii is the only state not providing the information.

Janice

From: Martin, Clarence (Curtis)
Sent: Wednesday, May 01, 2013 12:13 PM
To: Kawaoka, Keith E; Okubo, Janice S.; Ho, Kathleen
Cc: Martin, Clarence (Curtis); Leonida, Sharon L
Subject: FW: Right to know/need to know

I will contact EPA Region 9 for answer.

From: Apuzzo, Matt [<mailto:mapuzzo@ap.org>]
Sent: Wednesday, May 01, 2013 10:52 AM
To: Martin, Clarence (Curtis)
Subject: Right to know/need to know

Clarence,

Following up on our phone conversation from today, I'm writing to request the legal opinion on which you base your conclusion that the only people who have a right to know about the location and details of Tier II facilities are those who can demonstrate a need to know.

I am preparing a national story for the Associated Press that could alert the public to unknown risks such as those seen in the recent explosion in Texas. As you said, "That's not sufficient for us" as a need to know. Since that is inconsistent with what we are getting from the EPA and other states, I would appreciate reading the legal opinion on which you base that refusal.

Thank you,
Matt

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From: Okubo, Janice S.
Sent: Wednesday, May 01, 2013 7:55 AM
To: Kawaoka, Keith E; Lao, Harold C
Cc: Mauricio, Emilia R; Gill, Gary L.; Acido-Mercado, Leticia [Tish] R.
Subject: Associated Press Request for Tier II Data Set

Aloha All,

Associated Press (Washington DC) reporter Matt Appuzo (ph: 202-641-9439) is requesting access to the HEER Office Tier II data set for the most recent year. Could you or your staff please call him today and/or e-mail him the link or excel data set he is requesting? His e-mail address is mapuzzo@ap.or. Please let me know if you have contacted him. Thank you.

Janice Okubo
Communications Director
Hawaii State Department of Health
1250 Punchbowl Street
Honolulu, HI 96813
Ph: 586-4445
Fax: 586-4444

Promoting Lifelong Health & Wellness